

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EFRAIN SOTO,

Plaintiff,

DECISION AND ORDER

03-CV-6272L

v.

SHAWN/SHAUN KEENAN, et al.,

Defendants.

Plaintiff, Efrain Soto (“Soto”), when confined with the New York State Department of Corrections, filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983. This Court granted summary judgment, in part, for defendants on Soto’s claims that two of the defendants violated the Eighth Amendment by denying adequate medical treatment. (Dkt. #62). Although summary judgment was granted as to two defendants, the claims relating to assault and excessive force survived.

On November 19, 2009, the Court issued a scheduling order directing that the parties appear on January 7, 2010 to report on the status of the case and to set a trial date. Plaintiff has now been released from custody and resides in New York City. A certified letter, return-receipt requested, was sent to Soto at the last address he provided to the Court and the return-receipt was signed on

November 24, 2009. Since that letter was sent and received, neither the Court nor counsel for the defendants have heard anything further from Soto.


On January 7, 2010, this Court was prepared with defense counsel to conduct a scheduling conference and set the case for trial but the plaintiff failed to appear or otherwise contact the Court.

Based on the above, it appears that plaintiff has failed to prosecute this action. He is now released from custody and appears to have no further interest in prosecuting this action which, has been partially dismissed. In light of these facts, I find that plaintiff, Efrain Soto, has failed to prosecute this action and, therefore, I dismiss the case, with prejudice, pursuant to FED. R. CIV. P. 41(b).

CONCLUSION

This action is dismissed, with prejudice, for plaintiff's failure to prosecute pursuant to FED. R. CIV. P. 41(b).

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 8, 2010.